# Testimony Before
# The Judiciary Committee
# SENATE BILL SB-243
# DECLARING CON. GEN. STAT. 52-190a UNCONSTITUTIONAL

by
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I, Sylvester Traylor, will like to take this opportunity say thank-you for the opportunity to testify before the Connecticut Judiciary Committee regarding Senate Bill SB-243.

I support this Senate Bill SB-243 because it is headed in the right direction. However, it is further my belief that the crucial question concerning Conn. Gen. Stat. Sec. 52-190a,…..it doesn't matter if you try and argue over the words same or similar….it will still be an unconstitutional law, for the following reasons:

**QUESTION:** Can the Underprivileged Citizens of Connecticut even afford the COST of the $10,000 to $20,000, certificate of merit, due process right? If is answer to this question is in the negative, then doesn't this constitute a violation of their due process right, and access to the court? See **Boddie ET. AL. v. Connecticut ET. Al**. 401 U.S. 371; 91 S. Ct. 780; 28 L. ed. 2d. 113; 1971, it also set out: *"For at that point, the judicial proceeding becomes **the only effective means of resolving the dispute**....."* , *"It is an unjustifiable denial of a hearing, and therefore a denial of due process, to close the courts to an indigent on the ground of nonpayment of a fee."*

**Description of this Public Hearing:**

The Underprivileged Citizens of Connecticut (verses) The Special Interest Groups (on behalf of the Insurance Capitol of the World, Hartford Connecticut)

**HAVE WE FORGOTTEN:** "The Declaration of Independence":

*"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."*

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**FIRST AND FOREMOST**, I hereby move that the following State Actors **RECUSE THEMSELVES FROM VOTING ON THIS BILL** because of their conflict of interest to the United States Constitution and their violation to Conn. General Statutes Sec. 1-85 concerning their conflict with their sibling, family member business and associates being doctors who may have faced a medical malpractice law suit: State Senator Robert Kane, State Senator Tony Guglielmo, State Senator Len Fasano, State Senator Toni Boucher, State Senator Jason Welch, State Senator Toni Nathaniel Harp, State Senator Kevin Witkos, State Senator Michael McLachlan, State Senator Anthony Musto; State Senator Len Suzio; State Representative Prasad Srinivasan; see (VIOLATION OF THE CIVIL RICO FEDERAL RACKETERRING ACT USC 18, 1961-1963): (Breach of Oath) in violation of Connecticut General Statutes Sec. 1-25 Forms of Oaths, Article Eleven Sec. 1 of the Connecticut Constitution and Connecticut Judicial Code of Conduct Canon 2(a), 3(a)(2), 3(a)(3), 3(a)(4), and Canon 3(c)(l) and Article VI of the United States Constitution through depriving the Plaintiff of his due process and equal protection rights. Also see the 14th Amendment.

I, Sylvester Traylor, an African-American, who is a protected class, and was interracially married to the late Roberta Mae Traylor in the State of Connecticut. My wife's medical malpractice case presents constitutional questions concerning a violation of due process and equal protection rights under the color of law. It is my contention that the following State Actors has committed a violation of the Citizens of Connecticut rights with the intent to conspirer with "Private Parties" and "Special Interest Groups" to deprive me of my loss of consortium claim to a medical malpractice action. See LOVING ET UX. v. VIRGINIA. No. 395. SUPREME COURT OF THE UNITED STATES. 388 U.S. 1; 87 S. Ct. 1817; 18 L. Ed. 2d 1010; 1967.

I, Sylvester Traylor, an African-American and Roberta Mae Traylor, a White-American were a married couple and resided together as husband and wife, until her untimely death on March 1, 2004, after repeated attempts to Dr. BASSAM AWWA, M.D. AND CONNECTICUT BEHAVIORAL HEALTH ASSOCIATES P.C., for help, in which they failed to return any telephone calls while my wife was suffering from mental illness and

adverse reactions to medications prescribed by BASSAM AWWA, M.D. AND CONNECTICUT BEHAVIORAL HEALTH ASSOCIATES P.C.

***Prior,*** to the Hon. Judge Parker dismissing my medical malpractice action docket number #06CV5001159, I had filed a ***"civil rights action"*** against the Hon. Judge Parker and the New London Superior Court which was transferred to the United States District Court, docket number 3:11CV132 (CFD).

It is my contention in my federal action, docket number 3:11CV132 (CFD), to redress the deprivation of rights by the Defendant, Judge Parker……rights which are secured to me by the Constitution and laws of the United States as well as laws of the State of Connecticut.

***After,*** the filing of my federal action, docket number 3:11CV132 (CFD), the Hon. Judge Parker ***"continued his retaliation"*** against me by conspiring with the following Defendants with the intent to shield and conceal Dr. Awwa's from the destruction of evidence during a legal proceeding and for his medical malpractice actions.

It is my request to declare Conn. Gen Stat. Sec. 52-190a unconstitutional because of the State Actors violation of Title 42 U.S.C. 1985 (3), whose immunity does not extend to conspiracy under the color of law. Section 1985(3) reaches both conspiracies *"under the color of law"* and conspiracies effectuated through purely private conduct. Kindly take "JUDICIAL NOTICE" to the **"attached Exhibit "1, 2, 3 and 4" describing"** the SOCIOLOGICAL JURISPRUDENCE of the New London Superior Courtroom, and its effect on the memorandum of decisions made by the Honorable Judge Thomas F. Parker.

**PROTECTION FROM BAD JUDGES: (who have created problematic relationships with Defense Lawyers, doctors, and their insurance companies concerning 52-190a)**

The above State Actors has demonstrated that it is obvious that the State Actors are in fact conspiring with private parties under the color of law. In the present case, there is

no doubt that Dr. Bassam Awwa's (a private party) has an influence in the local communities which he just suddenly donated three hundred and fifty thousand dollars ($350,000.00) of land to the town of Old Lyme Connecticut, immediately after my medical malpractice case was filed. I view this money as "a buy out money" which the 1.) Local municipalities and their insurance companies, 2.) The local politicians, 3.) Local Judges and their clerks, 4.) and local defenses lawyer and their insurance companies, all reside upon these towns committees who are in fact "State Actors" which will benefit from Dr. Awwa's sudden ($350,000.00) donation buy out money, for protection. Old Lyme is one of the wealthiest cities in this State.

In Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967), the Supreme Court held that judges are immune from liability for damages in suits under 42 U.S.C. § 1983. I.e., this was Bradley v. Fisher all over again. What had been cast in stone, was re-cast in steel. In his strongly worded dissent, Justice William O. Douglas stated, "it does not say 'any person except judges'." Since Congress would not volunteer to give judges total immunity, they just gave it to themselves. By that ruling, the court had just enacted a "judicial" law. Apparently judiciary interest is superior to the public interest.

Title 42 U.S.C. § 1983 "on its face does not provide for any immunities." Heck v. Humphrey, 114 S.Ct. 2364, 2375-76 n. 1 (1994).

In other words, what good is the Civil Rights Act (1964) "the most sweeping civil rights legislation since Reconstruction" if a judge who ignores the Act, and who denies our rights, is not held accountable? Where is the incentive for him to behave?

Under Title 18 U. S. C. § 242, Congress provides that judges are liable for criminal acts committed under "color of law." The U.S. Attorney can charge a judge under this statute, but it is extremely rare and happens only when the behavior is so gross and obvious that it cannot be hidden. That statute reads:

- 18 U.S.C. § 242. Deprivation of rights under color of law. Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or

> laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

When you think of a “corrupt” judge, you think of one who trades rulings for cash. As far as we know, that risky sort of corruption is rare. You must appreciate however, that corruption takes many subtle but equally destructive forms. A dishonest judge can ignore evidence, twist procedure, obstruct the record, retaliate, manufacture facts and ignore others, dismiss valid claims, suborn perjury, mischaracterize pleadings, engage in ex parte communication and misapply the law. When he does these things intentionally, he commits a crime. Petty or grand, the acts are still crimes. It takes surprisingly little to “throw” a case.

The U.S. Attorney will never pursue a judge under § 242 for these offenses. Judges know they will never have to answer for this type of crime. They are immune, not by law, but by “judicial legislation” and professional courtesy. Judges violate § 242 all day long. This sort of criminal activity is so systemic, that many “bad” judges are incapable of recognizing their own misbehavior or the misbehavior of their brethren. As President Bush said, “We must make no distinction between terrorists, and those who harbor terrorists.”

The ultimate problem here is that the only way to get relief against a judge is to ask a judge for permission to sue a judge. As noted above, that never happens. As long as the subjects of the investigation are the gatekeepers of the investigation, there will be no investigation. Therefore, 18 U. S. C. § 242 is meaningless. If Sylvester Traylor, indigent an African-American (a protected class) cannot fight for his belated wife, and

bring to light the spoliation evidence during a legal proceeding, then all Americans who are victims of § 242 crimes are denied their civil rights.

Judges argue that America cannot endure a judiciary that is subject to political pressures. Their constant refrain is “Independence!” and “Freedom from retaliation!” What they really want is, “Independence from accountability” and “Freedom to retaliate.” We cannot allow the judiciary to spin accountability as “political pressure.” Ultimately, it is the people who need protection from bad judges, not the other way around, (and the people will always praise a judge who obeys the rules).

Read sections 1 and 2 of Article III of the U.S. Constitution very carefully. Congress is authorized to make rules for the Supreme Court and create (and by implication, dissolve) the lower courts.

- Section 1: The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

- Section 2, Clause 2: In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

If Congress can make rules for the Supreme Court, then the Supreme Court is not “independent” of Congress. Congress is the master of the courts. The Supreme Court cannot “rule” away the power of Congress and it cannot “rule” away its duty to put the people’s interests ahead of its own.

Judges are supposed to be our public servants. If they disobey Congress, Congress has the right and the power to make them answer for it. We the People used to have this power. We don’t anymore because our public servants “decided” to take it away from us. In our trust and ignorance, we let them do it.

A citizen's right of access to the courts is our only hope of restoring honesty and fair play in the court system. Self-serving judges took that right away from us, and Sylvester Traylor seeks to take it back.

Dishonest judges have turned Dr. King's dream into Dr.King's mirage.

## INSTITUTIONALIZED RACISM

1. AN OVERVIEW OF THE COURTROOM RACISM: The Honorable Justice Thurgood Marshall would have met this unconstitutional question as applied to the Plaintiff head on: ***"Three hundred and fifty years ago, the Negro was dragged to this country in chains to be sold into slavery. Uprooted from his homeland and thrust into bondage for forced labor, the slave was deprived of all legal rights. It was unlawful to teach him to read; he could be sold away from his family and friends at the whim of his master; and killing or maiming him was not a crime. The system of slavery brutalized and dehumanized both master and slave."***

2. **On December 21, 2009**, As an African-American, I was ordered to obtain an attorney in my OWN NAME, during a scheduled hearing without all parties present after an Ex Parte communication with the missing party. See **Exhibit "1".** I was placed in an isolated courtroom, so that the public could not view and/or hear the abuse of a judicial official.

3. To be in contact with the missing party without all persons including constitutes a conspiracy an African-American, under the color of law. A conspiracy to defraud and to deprive me of my civil rights. I was denied both knowledge and access to those negotiations which played a substantial part in my case against the Defendant, Bassam Awwa M.D. effectively denying me the substantial time and resources necessary for a hearing which the Defendants had failed to articulate in writing any request that my appearance should be stricken.

4. An example, of the present **INSTITUTIONALIZED RACISM:** I go to a store and see the price of an item which is one dollar ($1.00), but the cashier tells me that the price for that same item is two dollars ($2.00) "FOR ME" because I'm an indigent, African-American and Pro Se. The Connecticut General Statutes and the Connecticut Practice Book regarding the rules of the court should NOT change just because I'm an indigent, African-American Pro-Se. It would appear that since the death of the late Hon. Judge Hurley the New London Superior Court has not applied the rules of the court equally to all parties.

**ABUSE OF CONTEMPT POWER**

5. Once I obtained an attorney, my attorney was held in contempt of court for six (6) hours, without being fined for any wrongful actions. See **Exhibit "2".** Once again, I was placed in an isolated courtroom, so that the public could not view and/or hear the abuse of a judicial official.

6. **On January 20, 2011** the hearing before the Honorable Judge Thomas F. Parker was tantamount to a **LYNCHING PARTY** rather than a courtroom. For example: See Exhibit 4 regarding Attorney Hall's affidavit concerning the State Actor, Judge Parker causing intimidation in the courtroom targeting me and my counsel.

7. **JUDICIAL DEMEANOR AND COMPETENCE.** See Judicial Conduct and Ethics Fourth Edition Sec. 3.01, 3.02ª, and 3.02B. See pages 3-13 *"We take this opportunity to remind ourselves as judges that tyranny is nothing more than ill used power. We recognize that it is easy . . . to lose one's judicial temper, but judges must recognize the gross unfairness of becoming a combatant with a party. A litigant, already nervous, emotionally charged, and perhaps fearful, not only risk losing the case, but also contempt and a jail sentence by responding to a judge's rudeness in kind. The disparity in power between a judge and a litigant requires that a judge treat a litigant with courtesy, patience and understanding. Conduct reminiscent of the **playground bully** of our childhood is improper and unnecessary."*

8. **ABUSE OF CONTEMPT POWER.** See Judicial Conduct and Ethics Fourth Edition Sec. 2.03A and 2.03B *"Individuals were denied fair treatment and often denied personal freedom in violation of their rights."*

9. **On January 20, 2011**, My attorney and I appeared before Judge Parker. Immediately Judge Parker's behavior became off color by pointing his finger in a scolding manner, saying that the Plaintiff could not represent himself even though the Plaintiff had a right to represent himself in his personal capacity. Judge Parker went on to say to Attorney Berdick that he had to represent the Plaintiff in his personal capacity. Attorney Berdick told Judge Parker that he did not have to represent the Plaintiff in his personal capacity. Judge Parker then ordered Attorney Berdick to represent the Plaintiff in his personal capacity. Attorney Berdick refused because it was his belief that the Plaintiff had a right to represent himself in his own personal capacity. Judge Parker then directed the marshal to handcuff and shackle Attorney Berdick with the full knowledge that Attorney Berdick had just been released from the hospital and was under medication due to a major surgery. Attorney Berdick was escorted to a jail cell where he was then exposed to the risk of TB or other infectious diseases due to the freshly open wound due to the surgery.

10. **At 3:30pm**, I was under duress so I withdrew my Pro-Se appearance so that Attorney Berdick would not go to jail. I felt that the judge's state of mind was prejudicial and incompetent. I also believed that Attorney Berdick's mental state was altered due to the medication he was under.

11. Needless to say, once I obtained an attorney in my own name SYLVESTER TRAYLOR "as administrator," the New London Court still denied me access to the same court by holding my attorney in ***"contempt"*** for refusing to represent me in my "individual capacity," which constitutes a violation of my 7th, & 14th Amendment rights to the United States Constitution. My attorney viewed this ***"contempt"*** in relationship to the silent "Gentleman's Agreement Society" and

"Joining the Club Society" written by Dan A. Oren concerning the Race, Politics, and Citizenship in the "**Jim Crow"** of the north which would be calling him a ***nigger lover*** for filing an appearance on behalf of an African-American who was interracially married. Wikipedia, the free encyclopedia**:** In American English: **nigger lover** initially applied to abolitionists, then to white folk sympathetic towards black Americans.

## INTIMIDATION OF WITNESSES

12. **On February 3, 2011** What would have been the consequences for an African-American Plaintiff if the roles had been reversed, and he had reached into the judge's bench to touch a judge? See **Exhibit "3".** Once again, I was placed in an isolated courtroom, so that the public could not view and/or hear the abuse of a judicial official.

13. The intimidation of a witness by a Judge is undeniably a felony under any and all circumstances. A judge should not attempt to intimidate a witness under any circumstance. Even under the worst of trials the judge must always remain neutral so as to remain receptive and critical of all the evidence and circumstances provided by both parties at all times.

14. Had anyone, particularly an African-American man reached out and touched a Judge under any circumstances during, before or after trial it would be conceived immediately as a threat and he would have been immediately detained, while his legal case and likewise all his credibility would immediately and permanently be undone. As in this case, for a Judge to intimidate a witness in such a blatant fashion not only proclaims his bias against the Plaintiff, but as a member and conspirator of the defending party as well.

## I. I HEREBY CHALLENGE THE CONSTITUTIONALITY OF CONNECTICUT GENERAL STATUTES SEC. 52-190a AND SEC. 52-184c.

***"The rights of the Citizens of Connecticut are protected by the Constitution of the United States and <u>no legislation</u> can abridge their rights through applying an unconstitutional law which will punish victims of medical malpractice who cannot afford the $10,000 to $20,000 expert opinion letter."***

**<u>Connecticut Insurance Companies lobbyists' Influence on creating a "Poll Tax" as manifested in the Certificate of Merit in filing a medical malpractice action, in the State of Connecticut.</u>**

1. In 1996, 140 insurance companies were headquartered in Connecticut. See View and views from the Hallways of Government, Hartford Courant, Aug. 2, 1996, at A3.

2. Ever since the late eighteenth century, when merchant ship owners decided to pool their losses, Connecticut has been a prominent location for the insurance industry. As a result, Connecticut is a convenient venue for litigation of insurance coverage, as so many insurers can be found here.

3. According to this written testimony by Sylvester Traylor examines the question whether the insurance capitol of the world located in Connecticut has influenced the state's jurisprudence and whether, the Hon. Judge Thomas Parker's order to show cause why I could not file an appearance in my OWN NAME was in fact "tilted" by the insurers direct influence, while attending annual Christmas parties at Lawrence Memorial Hospital.

4. Sec. 52-190a, is unconstitutional because it unlawfully deprive the indigent access to the courts. 52-190a, constitutes discrimination against the poor litigants, lower socioeconomic class people, **<u>Poor</u>** <u>White</u>, **<u>Poor</u>** <u>Black</u>, **<u>Poor</u>** <u>Hispanic</u>, and **<u>Poor</u>** <u>Asian</u> Americans, access to the Connecticut judicial system to redress medical malpractice domiciled in the State of Connecticut.

5. It is my contention that the shortcoming of 52-190a statute as far as I am concerned, being a person of limited financial income and means, this law (52-190a) should be amended to incorporate a provision that provides a reasonable "voucher" for plaintiffs in medical malpractice cases to obtain funds for the "Certificate of Merit" . This amendment proposed can track the model and/or format that is already provided for the indigent litigants that cannot afford to pay for filing fees and/or court costs in the State of Connecticut.

**EXAMPLE I**

**The United State has already ruled that States cannot deprive the indigent of their rights. See HARPER *v.* VIRGINIA BD. OF ELECTIONS,383 U.S. 663 (1966)**

1. **Poll Tax: $ ????**
2. **Adverse Result: To the Poor**

**EXAMPLE II**

**See Conn. Gen. Stat. Sec. 52-190a.**

1. **Certificate of Merit: $10, 000 to $20, 000**
2. **Adverse Result: To the Poor**
3. **No Due Process to a medical malpractice action for the poor.**
4. **Violation of the poor 7th. Amendment right.**
5. **Violates the poor access to the court.**

7. Sec. 52-190a has caused **LEGITIMATE** cases to be dismissed prior to the discovery process. See Connecticut General Statutes Sec. 52-190a, attached hereto marked **Exhibit "5".** In its current form, Section 52-190a does not allow evidence (discovery process) to be presented in order to assess the merits of a case before the Connecticut Superior Court (Judges) dismisses a case. C.G.S. Sec. 52-190(a) and Section 52-184c, also ignores whether the Underprivileged Citizens of Connecticut will be "substantially harmed" due to the cost factor in obtaining a medical expert opinion letter which could cost between $10,000 to $20,000. Section 52-190a ***blames the victims*** of medical malpractice, and deprives them of their equal protection and due process rights in seeking a wrongful death claim and/or medical malpractice claim which is unconstitutional.

7.1 **What** if you or your family members are faced with a medical malpractice case in the State of Connecticut? To be more succinct, as of this present day in the State of Connecticut medical malpractice victims' rights are

viewed to be invisible unless they obtain an expert opinion letter prior to filing a complaint. There is one question the legislators who were responsible in the marshaling and drafting Sec. 52-190a forgot to ask: What would be the cost factor in obtaining such an expert opinion letter?

7.2 **<u>What</u>** if you and/or your family members cannot afford a good faith certificate and you have a legitimate case? Is the promise of the 14th., Amendment binding and enforceable by the "State Actors"? If the answer to this question is in the negative, then where is your protection if you and/or your family member cannot afford a good faith letter? If the answer to this question is in the positive, then how can this court ***"NOT"*** declare Conn. Gen. Stat. 52-190(a) and Section 52-184c., of the Connecticut General Statutes unconstitutional?

7.3 Since 2005 the State of Connecticut have erred and failed to protect its citizens equal protection rights as to medical malpractice, does that constitute a violation of the public's best interest and procedural due process and equal protection rights?

7.4 Have Citizens of Connecticut due process rights been ignored or violated as to Conn. Gen. Stat. 52-190(a) and Section 52-184c?

8. In the marshalling and drafting of Conn. Gen. Stat. 52-190(a) and Section 52-184c., one of the Connecticut legislator ***<u>Rep. Ward's</u>*** stated to the Speaker concerning the fact that Connecticut General Statute 52-190a was ***<u>unconstitutional</u>***, see pages 165, 166, 167, and 168. See **<u>Exhibit "6":</u>**

- ***"Mr. Speaker, I am not certain but I raise the question. It appears to me that this provision is probably <u>unconstitutional</u> under the separation of powers provisions."***

9. Kindly take notice further to ***Sen. Gunther's*** testimony referencing to the ***unconstitutionality*** of Section 52-184c and general statues and 52-190a. See **Exhibit "7":**

   - ***"But lo and behold, two years ago, when we had a hearing, I brought the fact out that the judges had ruled that that was unconstitutional. You can't do that with lawyers. You can't tell a lawyer how much he can take on a case. Even though you had a state law, he says, it's unconstitutional."***

10. Attorneys are not obligated to pay for an expert opinion letter for clients. Therefore, should a Plaintiff failed to obtain an expert opinion, their due process and equal protection rights will be violated under the 14th., Amendment of the United States Constitution and Connecticut Constitution Article First Sec. 1, 10, and 20 and Article Second and Fifth (separation of powers) in seeking judicial remedies for a medical malpractice claim.

11. The Connecticut poor, who have been "harmed" more than anyone else in the enactment of Conn. Gen. Stat. 52-190(a) and Section 52-184c, don't stand a heartbeat's chance in seeking an expert opinion letter. The state's insurance companies' lobbyists didn't even give a thought to the poor people who are victims of medical malpractice. The state's insurance companies' lobbyist's interest was on the side of the millionaires and billionaires insurance companies.

12. Nearly 44 million people were living in poverty in 2010, which were more than 14 percent of the American population and a jump more of four million from the previous year. Anyone who thinks things are much better now is delirious. More than 15 million children are poor — one of every five kids in the United States. More than a quarter of all **(blacks)** and a similar percentage of **(Hispanics)** are poor.

13. Where are they going to get the money to pay for an expert opinion letter? Welfare, which is for the poorest of the poor, does not even provide legal remedies concerning Conn. Gen. Stat. 52-190(a) and Section 52-184c.

14. Wherefore, I hereby move the State Legislators to declare Connecticut General Statutes Sec. 52-190a unconstitutional because the people of Connecticut since 2005 have been deprived of their basic fundamental and due process rights in seeking remedies through the judicial process.

15. I respectfully request the State Legislators to apply the Golden Rule of Law in considering the constitutionality of Connecticut General Statutes Sec. 52-190a: ***"In weighing out the rights of the individuals in the common good to apply to the law fairly and reasonably to protect the benefits of the many over the interest of the few."*** *See* Amitai Etzioni is author, most recently, of *The New Golden Rule: Community and Morality in a Democratic Society* (Basic Books, January 1997). "Balancing Individual Rights and the Common Good," Tikkun, Vol.12, No.1.

16. The people of Connecticut has been harm due to Connecticut General Statutes Sec. 52-190a.

**THE FOLLWING "STATE ACTORS" AND PRIVATE PARTIES HAS CAUSED A CONSITUTIONAL VIOLATION**

17. At all relevant times mentioned herein, the following Defendants are presenting being suited in their **official** and **personal capacity**. See Federal Court, docket number 3:11CV132 (AWT), and through a Writ of Mandamus actionable against "State Actors" pursuant to Federal Rule of Civil Procedure Rule 81(b), Writ of Mandamus under Appellate Rule 21, Denial of Discovery Order under 28 U.S.C. 1651(a) (1970), An Interlocutory Appeal 28 U.S.C. 1292(b), Duty to Disclose, General Provisions Governing Discovery under Fed. R. Civ. P. Rule 26(a) and

(c), Taking Testimony under Fed. R. Civ. P. Rule 43(c), fed. R. Civ. P. Rule Sec. 46.

18. I requested a THREE JUDGE PANEL HEARING, pursuant 28 U.S.C. § 2284.

19. At all relevant times mentioned herein in this Complaint, the Defendants are, the following **State Actors, in their personal and official capacity, AND HEREBY MOVE THE THEY RECUSE THEMSELVES FROM VOTING ON THIS BILL.** State Senator Robert Kane, State Senator Tony Guglielmo, State Senator Len Fasano, State Senator Toni Boucher, State Senator Jason Welch, Senator Toni Nathaniel Harp, and Senator Terry Gerratana, State Senator Kevin Witkos, State Senator Michael McLachlan; Senator Anthony Musto; State Senator Len Suzio; State Representative Prasad Srinivasan and CONNECTICUT MEDICAL INSURANCE COMPANY, was duly an authorized company under the laws of the State of Connecticut to insure licensed doctors for medical malpractice. CONNECTICUT MEDICAL INSURANCE COMPANY, domiciled is located in the State of Connecticut located at 80 Glastonbury Boulevard Glastonbury, Connecticut 06033 which in State Representative Prasad Srinivasan district.

20. **THE HONORABLE JUDGE THOMAS F. PARKER,** of whom conspired **under the color of law** with the New London Superior Court (State Actors): Hon. Judge James W. Abrams, Hon. Judge Robert C. Leuba, Hon. Judge Robert A. Martin, Hon. Judge A. Susan Peck, the Hon. Judge Emmet Cosgrove, State of Connecticut Judiciary Chief Justice Chase T. Rodgers, and Judge Barbara M. Quinn Chief Court Administrator**.**

21. It is hereby further submitted that the **HONORABLE JUDGE THOMAS F. PARKER,** has further conspired **under the color of law** with **CONNECTICUT COURT OF APPEALS; (State Actors),** Judge Douglas S. Lavine, Judge Thomas A. Bishop, Chief Judge Alexandra D. DiPentima Judge F.

Herbert Gruendel, Judge Robert E. Beach, Judge Stuart D. Bear, Judge Richard A. Robinson, Judge Bethany J. Alvord, Judge Carmen E. Espinosa, and it's employee Alan M. Gannuscio of the Connecticut Court of Appeals, with the intent to deprive I of his due process and equal protection rights.

22. **And THE STATE OF CONNECTICUT** ("State Actors" which includes**: 1.)** The New London Superior Court, **2)** The Connecticut Court of Appeals, **3)** The State of Connecticut Superior Court, Chief Court Administrator, the Honorable Judge Barbara M. Quinn, and **4)** State of Connecticut Judiciary, Chief Justice Chase T. Rodgers, all of whom have applied law unconstitutionally as to I, in an effort to shield and conceal a medical malpractice murderer.

23. At all relevant times mentioned herein, the above Defendants, was duly authorized to uphold the laws of the State of Connecticut and the Constitution of the United States of America.

24. At all times mentioned herein, the above Defendants, held themselves as duly authorized in protecting the rights of I and the Citizen of the State of Connecticut and offering services to members of the general public.

25. At all times mentioned the above Defendants were a member, agent servant and/or employee of the State of Connecticut.

26. The above State Actors was acting within their scope of their employment and with the knowledge, permission and authority of the State of Connecticut.

27. It is my contention that the above State Actors have in fact conspired with "private parties" to retaliate and/or discriminate against me with the intent to deprive me of my 14th. Amendment right to the United States Constitution because of my race and my color (Black), and my interracial marriage to Roberta Mae Traylor, a White-American.

28. It is hereby submitted that the above Defendants committed the above acts ***jointly***, ***concert*** with **each other.** Each Defendant had the duty and the opportunity to protect me and the Citizens of Connecticut from the unlawful action of the other Defendants, but each Defendant failed and refused to perform such duty, thereby proximately causing me and the Citizens of Connecticut injury.

**FACTUAL BACKGROUND**

29. **On February 3, 2011**, I brought it to the Honorable Judge Thomas F. Parker's attention that he had appealed to the Connecticut Judiciary Committee regarding the unconstitutionality of 52-190a.

30. **On February 15, 2011**, the Honorable Judge Thomas F. Parker retaliated against me and dismissed my case and sent it to the Connecticut Appellate Court after the Defendant's filed a second (2sd.) Motion to Dismiss for the same reasons concerning 52-190a, three (3) years earlier which was DENIED by the Honorable Judge Hurley.

*31.* **On March 1, 2011**, I received a letter from State Representative Gerald Fox offering his condolences regarding the wrongful death of I's wife's and inviting me to testify before the Judiciary Committee on March 4, 2011 concerning HB-6487. Chr. Rep. Fox's letter came to me on the anniversary of my wife's death.

*32.* **On March 4, 2011** I gave my testimony before the Connecticut Judiciary Committee.

33. **On March 30, 2011** at 10:00am. The Judiciary Committee passed House Bill HB-6487 (30-11 votes).

34. **On May 26, 2011** at 6:23pm. The House of Representatives passed House Bill HB-6487. (87-51).

35. **On June 8, 2011**, House Bill HB-6487 was temporary passed over until next session because of the **following** Defendants "State Actors" were attempting to derail House Bill HB-6487 because of their personal gain and enrichment.

**FURTHER BACKGROUND**

36. This is further an action against the following "State Actors" who the lobbyists on behalf of the medical malpractice insurance companies have created a problematic relationship both financial and ethical conflict of interest.

37. **On May 26, 2011, State Representative Prasad Srinivasan,** attempted to derail House Bill HB-6487 through seeking personal gain and enrichment on behalf of his "son" and Dr. Prasad Srinivasan's, fellow associates instead of acting on behalf of the **"Public's Best Interest"** which is inconsistent with the oath that he have taken to up hold the Constitution of the United States.

38. There is no dispute as the fact that **State Representative Prasad Srinivasan** is also a doctor, and a member of the Connecticut State legislature, who is bound by oath or affirmation to support and to uphold the 14th, Amendment and Article VI of the United States Constitution. However, he has acted in conflict of interest to the United States Constitution because of a problematic relationship both financial and ethical conflict of interest with **State Representative Prasad Srinivasan** his own medical doctors associates as well as his **"SON'S** associates who are doctors of whom could possibly face a medical malpractice lawsuit. It is hereby submitted that **State Representative Prasad Srinivasan** action in opposing HB 6487 does in fact constitutes a violation of Conn. General Statutes Sec. 1-85 for promoting an unconstitutional law (Sec. 52-190a) which will deprive I and thousands of citizens of Connecticut their equal protection and due process rights.

39. **On June 8, 2011**, **Senator Terry Gerratana,** attempted to derail House Bill HB-6487 through seeking personal gain and enrichment on behalf of ***"her husband"***

and his fellow associates instead of acting on behalf of the **"Public's Best Interest"** which is inconsistent with the oath that he have taken to up hold the Constitution of the United States.

40. There is no dispute as to State Senator Terry Gerratana's husband, the Dr. Frank J. Gerratana, of who faced a medical malpractice action against himself in **DIGIACOMO, RICCI v. GERRATANA, FRANK, J.** See Connecticut Superior Court Docket number: **HHB-CV07-5006078-S.** The fact is that State Senator Terry Gerratana's husband and his associates is paying the Senator to help stop bills from getting passed which will protect the best interest of victims to medical malpractice.

41. It would appear that State Senator Terry Gerratana has conspired with other "State Actors" to deprived I and Citizens of Connecticut of their 7th., and 14th. Amendment **"Due Process"** rights through breaching their oath and affirmation under the Article VI of the United States Constitution to support and to uphold the 14th, Amendment.

42. This action aroused out of the fact that State Senator Terry Gerratana has conspired with other "State Actors" to deprived I, an African-American of his rights to seek the State of Connecticut legislators to declare Connecticut General Statutes 52-190a unconstitutional because it deprives I and Citizens of Connecticut their Seventh (7th.) right to have a fair trial by a jury, and constitutes a violation of their equal protection and due process rights under the 14th., Amendment to the United States Constitution: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

42.1 ***First and foremost***, the lobbyists who were instrumental in marshaling Connecticut General Statutes 52-190a were in fact no more or less than

petitioning to State of Connecticut legislators to deny the victims to a medical malpractice their rights to a jury of their peers, by requesting the authority of a single judge to asset the merits of a medical malpractice action which constitutes a violation of I and the Citizens of Connecticut their 7th. Amendment right to a fair trial by a jury which provides in pertinent part that: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved..." This language does not include a single reference to "manipulation" of a jury by the Court in a conspiracy with lawyers to design a verdict suitable to the Court through the use of lawyer rules, judicial rules, court rules, or otherwise trumped-up ***"legal technicalities"*** and instructions which effectively "handcuffs" the jury. All of these activities are no more or less than a denial of the right to a jury of peers with the constitutional authority to judge both the facts and law in a case.

42.2 ***Secondly***, my rights and Citizens of Connecticut rights are protected by the Constitution of the United States and no legislation can abridge their rights through applying an unconstitutional law which will punish "indigent victims" to a medical malpractice action who cannot afford the $10,000 to $20,000 expert opinion letter.

42.2.1 In the State of Connecticut, the State does offer a FEE WAIVER to indigent litigants See Conn. Gen. Stat. Sec. 52-259b. Waiver of fees and payment of the cost of service of process for indigent party. (a) In any civil or criminal matter, if the court finds that a party is ***indigent*** and unable to pay a fee or fees payable to the court or to pay the cost of service of process, the court shall waive such fee or fees and the ***cost of service of process shall be paid by the state***.

42.2.2 However, this same indigent person who has just been granted a FEE WAIVER is suddenly sent out of the court to obtain a good faith

certificate which they are unable to pay the $10,000 to $20,000 expert opinion letter which is creating a violation of their equal protection and ***due process rights*** just because they are underprivileged.

42.2.3 Attorneys are **NOT obligated** to pay for the expert opinion letter. **What** if your family and/or friends are faced with a medical malpractice case in the State of Connecticut**?** To be more succinct, as of this present day in the State of Connecticut medical malpractice victims' rights are viewed to be invisible.

42.2.4 **What** if you and/or your friends cannot afford a good faith certificate and you have a legitimate case? Is the promise of the 14th. Amendment binding and enforceable by the "State Actors"? If the answer to this question is in the negative, then where is your protection if you cannot afford a good faith letter? If the answer to this question is in the positive, then how can the "State Actors" deny I and the Citizens of Connecticut their Due process and Equal Protection rights?

43. **On June 8, 2011**, **State Senator Robert Kane,** attempted to derail House Bill HB-6487 through seeking personal gain and enrichment on behalf of ***"his wife"*** and her fellow associates instead of acting on behalf of the **"Public's Best Interest"** which is inconsistent with the oath that he have taken to up hold the Constitution of the United States.

44. **State Senator Robert Kane**, who is a member of the Connecticut state legislature, and is bound by oath or affirmation to support and to uphold the 14th, Amendment and Article VI of the United States Constitution. However, he has acted in conflict of interest to the United States Constitution because of a problematic relationship both financial and ethical conflict of interest with Senator **Robert Kane's** wife and her associates who are doctors of whom could possibly face a medical malpractice lawsuit which constitutes a violation of Conn. General

Statutes Sec. 1-85 for promoting an unconstitutional law (Sec. 52-190a) which will deprive I and thousands of citizens of Connecticut their equal protection and due process rights.

45. **On June 8, 2011**, **State Senator Tony Guglielmo,** attempted to derail House Bill HB-6487 through seeking personal gain and enrichment on behalf of his **"Insurance Agent Business"** instead of acting on behalf of the **"Public's Best Interest"** which is inconsistent with the oath that he have taken to up hold the Constitution of the United States.

46. **State Senator Tony Guglielmo**, who is a member of the Connecticut state legislature, and is bound by oath or affirmation to support and to uphold the 14th, Amendment and Article VI of the United States Constitution. However, he has acted in conflict of interest to the United States Constitution because of his **"Insurance Agent Business"** which insure medical professionals and his personal associations with doctors who could possibly face a medical malpractice law suit which constitutes a violation of Conn. General Statutes Sec. 1-85 for promoting an unconstitutional law (Sec. 52-190a) which will deprive I and thousands of citizens of their equal protection and due process rights.

47. **On June 8, 2011**, **State Senator Len Fasano,** attempted to derail House Bill HB-6487 through seeking personal gain and enrichment on behalf of ***"his father"*** and his fellow associates instead of acting on behalf of the **"Public's Best Interest"** which is inconsistent with the oath that he have taken to up hold the Constitution of the United States.

48. **State Senator Len Fasano**, who is a member of the Connecticut state legislature, and is bound by oath or affirmation to support and to uphold the 14th. Amendment and Article VI of the United States Constitution. However, he has acted in conflict of interest to the United States Constitution because of a problematic relationship both financial and ethical conflict of interest with Senator

**Len Fasano** ***"father"*** and his associates who are doctors, of whom could possibly face a medical malpractice lawsuit which constitutes a violation of Conn. General Statutes Sec. 1-85 for promoting an unconstitutional law (Sec. 52-190a) which will deprive I and thousands of citizens of Connecticut their equal protection and due process rights.

49. **On June 8, 2011**, **State Senator Toni Nathaniel Harp,** attempted to derail House Bill HB-6487 through seeking personal gain and enrichment on behalf of ***"her daughter"*** and her fellow associates instead of acting on behalf of the **"Public's Best Interest"** which is inconsistent with the oath that he have taken to up hold the Constitution of the United States.

50. **State Senator Toni Nathaniel Harp**, who is a member of the Connecticut state legislature, and is bound by oath or affirmation to support and to uphold the 14th, Amendment and Article VI of the United States Constitution. However, she has acted in conflict of interest to the United States Constitution because of a problematic relationship both financial and ethical conflict of interest with Senator Toni Nathaniel Harp ***"daughter"*** and her associates who are doctors, of whom could possibly face a medical malpractice lawsuit which constitutes a violation of Conn. General Statutes Sec. 1-85 for promoting an unconstitutional law (Sec. 52-190a) which will deprive I and thousands of citizens of Connecticut their equal protection and due process rights.

51. **On June 8, 2011**, **State Senator Anthony Musto**, attempted to derail House Bill HB-6487 through seeking personal gain and enrichment on behalf of ***"his father"*** and his fellow associates instead of acting on behalf of the **"Public's Best Interest"** which is inconsistent with the oath that he have taken to up hold the Constitution of the United States.

52. **State Senator Anthony Musto**, who is a member of the Connecticut state legislature, and is bound by oath or affirmation to support and to uphold the 14th,

Amendment and Article VI of the United States Constitution. However, he has acted in conflict of interest to the United States Constitution because of a problematic relationship both financial and ethical conflict of interest with Senator **Anthony Musto** ***"father"*** and his associates who are doctors, of whom could possibly face a medical malpractice lawsuit which constitutes a violation of Conn. General Statutes Sec. 1-85 for promoting an unconstitutional law (Sec. 52-190a) which will deprive I and thousands of citizens of Connecticut their equal protection and due process rights.

***Needless to say, the following legislators: "State Actors" goal is to deprive me and the Citizens of Connecticut rights to a jury verdict through placing caps on medical malpractice cases which have failed in both the United States House of Representative and the United States Senate. Therefore, my rights are protected by the Constitution of the United States. Furthermore, the following "State Actors" continues to make unconstitutional assertion to abridge my constitutional rights by punishing me and the Citizens of Connecticut through unconstitutional legislation.***

53. **On June 8, 2011**, **State Senator Toni Boucher**, attempted to derail House Bill HB-6487 through seeking personal gain and enrichment on behalf of ***"The Insurance Capitol of the World: Hartford, Connecticut"*** and not on behalf of the **"The General Public's Best Interest"** which is inconsistent with the oath that she have taken to up hold the Constitution of the United States.

***54.*** **State Senator Toni Boucher**, is offering a poisonous pill to derail House Bill HB-6487 with intent the to deprive I and the victims of medical malpractice their 7th. Amendment right through legislating that a cap be put on (1) Damages awarded and received by the claimant; or (2) the settlement amount received pursuant to a settlement agreement.

55. **State Senator Toni Boucher**, who is a member of the State of Connecticut legislature, and is bound by oath or affirmation to support and to uphold the 14th. Amendment, Article VI of the United States Constitution, and the 7th. Amendment to the United States Constitution. There is no dispute as to **State Senator Toni Boucher**, intent to legislate the deprivation of the victims to a medical malpractice their rights to a jury of their peers which will constitute a violation of I and the citizens of Connecticut their 7th. Amendment to the United States Constitution which also constitutes a violation of Conn. General Statutes Sec. 1-85 for promoting an unconstitutional law (Sec. 52-190a) which will deprive I and thousands of citizens of their equal protection and due process rights.

56. **On June 8, 2011**, **State Senator Jason Welch**, attempted to derail House Bill HB-6487 through seeking personal gain and enrichment on behalf of ***"The Insurance Capitol of the World: Hartford, Connecticut"*** and not on behalf of the **"The General Public's Best Interest"** which is inconsistent with the oath that he have taken to up hold the Constitution of the United States.

***57.*** **State Senator Jason Welch** , is offering a poisonous pill to derail House Bill HB-6487 with intent the to deprive I and the victims of medical malpractice their 7th. Amendment right through legislating that a cap be put on (1) Damages awarded and received by the claimant; or (2) the settlement amount received pursuant to a settlement agreement.

58. **State Senator Jason Welch**, who is a member of the State of Connecticut legislature, and is bound by oath or affirmation to support and to uphold the 14th. Amendment, Article VI of the United States Constitution, and the 7th. Amendment to the United States Constitution. There is no dispute as to **State Senator Jason Welch**, intent to legislate the deprivation of the victims to a medical malpractice their ***"rights to a jury"*** of their peers which will constitute a violation of I and the citizens of Connecticut their 7th. Amendment to the United States Constitution which also constitutes a violation of Conn. General Statutes Sec. 1-85 for

promoting an unconstitutional law (Sec. 52-190a) which will deprive I and thousands of citizens of their equal protection and due process rights.

59. **On June 8, 2011**, **State Senator Michael McLachlan,** attempted to derail House Bill HB-6487 through seeking personal gain and enrichment on behalf of ***"The Insurance Capitol of the World: Hartford, Connecticut"*** and not on behalf of the **"The General Public's Best Interest"** which is inconsistent with the oath that he have taken to up hold the Constitution of the United States.

***60.*** **State Senator Michael McLachlan,** is offering a poisonous pill to derail House Bill HB-6487 with the intent to deprive I and the victims of medical malpractice their 7th. Amendment right through legislating that a cap be put on (1) Damages awarded and received by the claimant; or (2) the settlement amount received pursuant to a settlement agreement.

61. **State Senator Michael McLachlan,** who is a member of the State of Connecticut legislature, and is bound by oath or affirmation to support and to uphold the 14th. Amendment and Article VI of the United States Constitution. There is no dispute as to **State Senator Michael McLachlan,** intent to legislate the deprivation of the victims to a medical malpractice their ***"rights to a jury"*** of their peers which will constitute a violation of I and the citizens of Connecticut their 7th. Amendment to the United States Constitution which also constitutes a violation of Conn. General Statutes Sec. 1-85 for promoting an unconstitutional law (Sec. 52-190a) which will deprive I and thousands of citizens of their equal protection and due process rights.

62. **On June 8, 2011**, **State Senator Kevin Witkos**, attempted to derail House Bill HB-6487 through seeking personal gain and enrichment on behalf of ***"The Insurance Capitol of the World: Hartford, Connecticut"*** and not on behalf of the **"The General Public's Best Interest"** which is inconsistent with the oath that he have taken to up hold the Constitution of the United States.

***63.*** **State Senator Kevin Witkos**, is offering a poisonous pill to derail House Bill HB-6487 with the intent to deprive I and the victims of medical malpractice their 7th. Amendment right through legislating that a cap be put on (1) Damages awarded and received by the claimant; or (2) the settlement amount received pursuant to a settlement agreement.

64. **State Senator Kevin Witkos**, who is a member of the State of Connecticut legislature, and is bound by oath or affirmation to support and to uphold the 14th. Amendment and Article VI of the United States Constitution. There is no dispute as to **State Senator Kevin Witkos**, intent to legislate the deprivation of the victims to a medical malpractice their ***"rights to a jury"*** of their peers which will constitute a violation of I and the citizens of Connecticut their 7th. Amendment to the United States Constitution which also constitutes a violation of Conn. General Statutes Sec. 1-85 for promoting an unconstitutional law (Sec. 52-190a) which will deprive I and thousands of citizens of their equal protection and due process rights.

65. **On June 8, 2011**, **State Senator Len Suzio**, attempted to derail House Bill HB-6487 through seeking personal gain and enrichment on behalf of ***"The Insurance Capitol of the World: Hartford, Connecticut"*** and not on behalf of the **"The General Public's Best Interest"** which is inconsistent with the oath that he have taken to up hold the Constitution of the United States.

***66.*** **State Senator Len Suzio**, is offering a poisonous pill to derail House Bill HB-6487 with the intent to deprive I and the victims of medical malpractice their 7th. Amendment right through legislating that a cap be put on (1) Damages awarded and received by the claimant; or (2) the settlement amount received pursuant to a settlement agreement.

***67.*** **State Senator Len Suzio**; who is a member of the State of Connecticut legislature, and is bound by oath or affirmation to support and to uphold the 14th. Amendment and Article VI of the United States Constitution. There is no dispute as to **State Senator Len Suzio**, intent to legislate the deprivation of the victims to a medical malpractice their ***"rights to a jury"*** of their peers which will constitute a violation of I and the citizens of Connecticut their 7th. Amendment to the United States Constitution which also constitutes a violation of Conn. General Statutes Sec. 1-85 for promoting an unconstitutional law (Sec. 52-190a) which will deprive I and thousands of citizens of their equal protection and due process rights.

## II. STATUTORY LANGUAGE AT ISUUE

68. In March 2011 the Connecticut Judiciary Committee held a public hearing on House Bill HB-6487 which extended the time period for a litigant to file an expert opinion letter which should "only" be provided during the discovery process. See **Exhibit "8"** BILL HB-6487 which corrects part of the unconstitutionality of C.G.S. 52-190a by allowing cases to proceed towards the discovery process, so that they may present evidence to support their claim.

69. House Bill HB-6487 "ONLY" allows dismissal of a claim due to the failure to obtain an opinion letter during the discovery process period. The Court would then order such a letter to be filed within 60 days.

70. In the present law Conn. Gen. Stat. 52-190a which should be declared unconstitutional because of the "cost effect of $10, 000 to $20, 000 for a good faith certificate" which BLAMES THE VICTIMS to medical malpractice, and deprives the underprivileged citizens of their due process rights to seek a wrongful death claim and/or medical malpractice claim. In the State of Connecticut an attorney or claimant cannot file a medical malpractice lawsuit or apportionment complaint unless he or she has made a reasonable inquiry under the circumstances to determine that grounds exist for a good faith belief that the

claimant received negligent medical care or treatment. The complaint or initial pleading must contain a certificate to this effect (“good faith certificate”).

71. In ***Bennett v. New Milford Hospital****, Inc.,* 300 Conn. 1 (2011), the defendant filed a motion to dismiss the medical malpractice action because the author of I's opinion letter was not a “similar health care provider. ” The defendant specialized in emergency medicine, but the opinion letter's author described himself as “a practicing and board certified general surgeon with added qualifications in surgical critical care, and engaged in the practice of trauma surgery.”

72. The court ruled that the author of an opinion letter must be a similar health care provider. The court found the statute requiring the opinion letter ***to be ambiguous*** when read in isolation. However, when read together with related statutes and legislative history, the court concluded that the author of an opinion letter must be a similar health care provider, regardless of his or her potential qualifications to testify at trial under another statutory provision.

73. The court also ruled that the law required a case to be dismissed when a plaintiff failed to file an opinion letter written by a similar health care provider. They found this statutory text ***also to be ambiguous,*** but when read in conjunction with legislative history and other cases, the court concluded that dismissal was mandatory. The court acknowledged the severity of this remedy, but emphasized that plaintiffs ***could re-file their case.***

74. On March 30, 2011 the Connecticut Judiciary Committee took action and voted 30 YEA to 11 NAY and passed judiciary bill HB-6487, declaring Conn. Gen. Stat. 52-190(a) and Section 52-184c unconstitutional. See **Exhibit “9”** the Public Hearing transcript Dated March 4, 2011.

75. On May 26, 2011 the Connecticut House of Representatives voted 87 YEA to 51 NAY and passed judiciary bill HB-6487declaring Conn. Gen. Stat. 52-190(a) and

Section 52-184c unconstitutional. See **Exhibit "10"** the comments made by Connecticut House of Representatives dated May 26, 2011. Rep. Hewett of the 39th, Rep. Barm of the 15th, Rep. Grogins of the 129th, and Rep. Fritz of the 90th, of whom clearly set out that this bill should address the VICTIMS to medical malpractice.

76. On June 8, 2011 the "above" State Senators acted in conflict of interest to the United States Constitution because of the direct effect HB-6487 would have on their sibling, family member business and associates being doctors who may faced a medical malpractice law suit which constitutes a violation to Conn. General Statutes Sec. 1-85 through promoting an unconstitutional law which will deprive thousands of citizens of their equal protection and due process rights. See **Exhibit "11"** the Connecticut Senate transcript dated June 8, 2011 of which Senator Coleman, Senator Kissel and Senator Prague clearly set out the need change the to change the unconstitutional law Sec. 52-190a.

## III. The legislative history

77. A review of Connecticut legislative history of Public Act 05-275 § 2 clearly illustrated the legislation was not intended to prohibit experts from authoring an opinion but rather contemplated their use. Representative Lawlor (99th district) ***"I do believe it's fair to say that more often than not, if it comes to trial, that the expert who gave the initial opinion would probably end up being the expert who testified at trial".*** Conn. General Assembly House proceeding 2005, Volume 48, Part 31, Pages 9501-9503.

78. Further, Mike Neubert, testifying on behalf of the Connecticut State Medical Society, stated in a medical malpractice case that I has the burden any way of providing expert testimony to prove his case. This [opinion] clearly can't be viewed as an added burden. It is just a matter of when this opinion is provided ... It would help eliminate some of the more questionable and meritless claims filed under the present statutory scheme. Joint Standing Committee Hearings,

Judiciary, Part 18, Page 5539 (2005). Mr. Neubert goes on to testify that the opinion is intended to address ***"these cases where attorneys, based on their own judgment and maybe in good faith, have misread what an expert has told them".***

79. The Connecticut legislative history does not discuss the cost for an expert opinion letter which is between $10,000 to $20,000; however, common sense would tell you that not everyone in the State of Connecticut can afford an expert opinion letter.

80. Furthermore, nowhere in the entire legislative history does it indicate that a qualified expert would be precluded from offering an opinion or that only a similar healthcare provider as defined by Conn. Gen. Stat. § 52-184c(b) or (c) can give the opinion. The Connecticut Appellate Court has held that the use of a similar healthcare provider as referred to by Conn. Gen. Stat. § 52-190a establishes objective criteria, not subject to the exercise of discretion, making the pre-litigation requirement more definitive and uniform. Bennett v. New Milford Hospital, et al, 117 Conn. App. 535, 549 (2009). There is nothing in the legislative history to support this holding.

81. The legislative history of this amendment indicates that it was intended to address the problem that some attorneys, either intentionally or innocently, were misrepresenting in the certificate of good faith the information that they had obtained from experts. Dias v. Grady, 292 Conn. 350, 357-58 (2009) citing Joint Standing Committee Hearing, Judiciary, Pt. 182005 Sessions, Page 5553, testimony of Michael D. Neubert.

82. The legislative policy it was designed to implement was to force a Plaintiff, prior to initiating a medical malpractice action, to seek competent advice to substantiate the validity of the claim and to present the expert's opinion attached to the certificate of good faith to avoid any misinterpretation. The legislative

history makes clear that the goal of the legislature was to establish a procedure wherein plaintiffs had to obtain an opinion from their experts prior to filing suit and to disclose the opinion as part of the initial filing. The Connecticut Appellate Court's interpretation is not supported by the legislative history.

## IV. The circumstances surrounding its enactment

83. The Connecticut legislative history of Public Act 05-275 § 2 indicates that it was intended to address the problem that some attorneys, either intentionally or innocently, were misrepresenting in the certificate of good faith the information they had obtained from experts. Dias v. Grady, 292 Conn. 350, 357-58 citing Conn. Joint Standing Committee Hearings, Judiciary, Pt. 18, 2005 Sess., 5553, Michael D. Neubert, testifying on behalf of the Connecticut State Medical Society, stated that the amendment was intended to ***"ensure that there is a reasonable basis for filing a medical malpractice action under the circumstances, it would help eliminate some of the more questionable and meritless claims filed under the [prior] statutory scheme".*** Conn. Joint Standing Committee Hearing, supra, Page 5539. The amendment was targeting ***"those cases where attorneys, based on their own judgment and maybe in good faith, have misread what an expert had [told them] ... very often you hear what you want to hear ... or interpret [what has] been told you as you want to interpret it ... if the [physician] is not willing to sign on the dotted line, maybe that is a good indication that this is not a good case to bring ... what we are trying to do is eliminate those cases that should not be in the system".*** JQ. Page 5553 Grady, supra FN7. See also Connecticut Joint Standing Committee Hearing, judiciary Pt. 19, 2005 Sess., P. 5743.

84. Testimony before Connecticut legislative committees regarding proposed legislation sheds light on the problem or issue that the legislature sought to resolve and the purpose it sought to serve in enacting a statute. Grady, supra FN 7 citing State v. Ledbetter, 240 Conn. 317,337 (1997).

**a)** This legislation was to address the situation in which Plaintiff's counsel either intentionally or erroneously misinterpreted the opinion presented by an expert in concluding there is a good faith basis to bring the action. In this matter, there is no misrepresentation, misinterpretation, hedging, or puffing. I's expert opinion was attached to the good faith certification and sets forth the grounds for his opinion, and the review of the pertinent records available which are referred to.

**b)** The author represents that they have reviewed the records, are competent to review the records for deviation of the standard of care (not merely to identify evidence of medical negligence) and goes on to explain the deviations. The opinion was attached to the good faith certification and clearly illustrates that Plaintiff's counsel in this matter sought the advice of an expert prior to filing suit. The opinion is attached to the good faith certification. There is no misrepresentation, misinterpretation, hedging, or puffing. The author is a qualified expert. See Bennett, 117 Conn. App. FN 4. The opinion is based on the Decedent's medical records and clearly obviates the issue behind the amendment.

## V. The legislative policy it was designed to implement

85. The Connecticut legislative policy behind the amendment to Conn. Gen. Stat. § 52-190a is to prevent groundless lawsuits against health care providers. Dias v. Grady, 292 Conn. 350, 359 (2009); LeConche v. Elligers, 215 Conn. 701, 710 (1990); Votre v. County Obstetrics and Gynecology Group, P.C., 113 Conn. App. 569, 585 (2008). The opinion identifies the records that were provided and reviewed in forming the opinion.

86. This policy is not fostered by prohibiting qualified experts from assisting in providing an opinion in support of a reasonable inquiry. If anything, to interpret Conn. Gen. Stat. § 52-190a to exclude the use of experts would operate contrary to the policy. The policy should encourage Plaintiffs to seek the most qualified expert, and to expand their inquiry beyond mere evidence of negligence. To raise the bar further and seek an opinion as to whether the conduct constitutes a breach of the standard of care, Plaintiff's counsel, which surpasses the minimum standard, provides greater protection to the potential Defendant, which is the policy of the legislation. To preclude a highly qualified expert under Conn. Gen. Stat. § 52-184c would be an absurd result that the legislature could not have

intended. Grondin v. Curi, 262 Conn. 637, 656 (2003) (noting under a defendant's proposed construction of Conn. Gen. Stat. § 52-184c, a hypothetical physician who is via study and perhaps even a dissertation, the foremost expert in a particular field of medicine, may be precluded from testifying. We deem that situation an absurd result which we presume that the legislature did not intend); see e.g. Great Country Bank v. Pasture, 241 Conn. 423, 432 (1997). Indeed, Conn. Gen. Stat. § 52-190a's reference to Conn. Gen. Stat. § 52-184c merely sets out minimum qualifications and standards for experts in medical malpractice cases. Grondin at 657.

87. In construing a statute, common sense must be used and a court must assure that a reasonable and rational result was intended from the legislation. Goldstar Medical Services, Inc. v. Dept. of Social Services, 288 Conn. 790, 803 (2008). A statute should be interpreted with common sense so as not to yield bizarre results. Bovat v. City of Waterbury, 258 Conn. 574 (2001). The law favors rational and sensible statutory construction. Connelly v. Comm. of Corrections, 258 Conn. 394, 403 (2001). When construing a statute, a court's fundamental objective is to ascertain and give effect to the intent of the legislation. State v. Jenkins, 288 Conn. 610, 620 (2008). The court seeks to determine in a reasonable manner the meaning of the statutory language as applied to the facts of the case, Id. at 620, including the question of whether the language actually does apply. Earl v. Commissioner of Children and Families, 288 Conn. 163, 173 (2008).

88. If a statute can be construed in several ways, courts will adopt the construction that is most reasonable. Comm. of Environmental Protection v. Mellon, 286 Conn. 687 (2008). The intent of the lawmakers must prevail over the literal sense and precise letter of the language of the statute. Schiano v. Bliss Enterminator, 260 Conn. 21, 36; Connelly, 258 Conn. 394 supra.

89. The Connecticut Appellate Court found the language of Conn. Stat. § 52-190a was not ambiguous despite the varying interpretations of our Superior Courts, and despite the fact that it would preclude a highly qualified expert who practices in the emergency room from offering an opinion against an emergency room physician who is not board certified. The decision ignores the good faith efforts of I which was the goal of the legislation and the fact that the author and the opinion exceeded the minimum standards established by the amendment. Courts are bound by plain and unambiguous meaning of the statute unless that meaning is contrary to clearly expressed legislative intent. Skubel v. Fuoroli, 113 F.3d 330, 335 (2nd Cir. 1997). The legislative policy was that the Appellate Court recognized that I's author of the opinion was a highly qualified expert. See Bennett v. New Milford Hospital, 117 Conn. App. 540, FN 4.to avoid groundless lawsuits. This policy is fostered by encouraging Plaintiff's counsel to go beyond the minimum investigation required by Conn. Gen. Stat. § 52-190a.

90. Conn. Gen. Stat. § 52-190a's reference to Conn. Gen. Stat. § 52-184c is intended to set a minimum standard. Grondin at 657. Conn. Gen. Stat. § 52-190a refers to Conn. Gen. Stat. § 52-184c as a whole. It does not expressly exclude subsection (d). Although at times we interpret certain statutory provisions as demonstrating a legislative intent to exclude by implication other possible referents, courts should decline to do so where there is no language, legislative history, or statutory purpose suggesting that a court reach such a result. Burke v. Fleet National, 252 Conn. 1,23-24 (1999). The court should not have interpreted Conn. Gen. Stat. § 52-190a in a vacuum, but should interpret it in a way which accomplishes its goal.

91. By attaching the opinion to the certification, I has provided evidence that the opinion was obtained prior to suit and the statutory procedure was followed. The opinion surpasses the minimum standard set and protects the Defendant from meritless suits.

92. The Connecticut legislative history does not discuss the cost for an expert opinion letter which is between $10,000 to $20,000; however, common sense would tell you that not everyone in the State of Connecticut can afford an expert opinion letter.

## VI. Existing common law and legislative principles

93. Connecticut has an express policy preferring to bring about a trial on the merits of a dispute whenever possible and to secure for litigants their day in court. Coppola v. Coppola, 243 Conn. 657, 665 (1998); Snow v. Calise, 174 Conn. 567, 574 (1978). Rules of practice and procedure are both to facilitate business and to advance justice. They will be construed liberally in any case where it shall be manifest that a strict adherence to them will work surprise or injustice. Coppola at 665. Rules are a means to justice and not an end in themselves. In re Dodson, 214 Conn. 334, 363 cert. denied 498 U.S. 896 (1990). Our practice does not favor the termination of proceedings without a determination of the merits of the controversy when that can be brought about with due regard to necessary rules of procedure. Johnson v. Zoning Board of Appeals, 166 Conn. 102,111 (1974).

94. It is a fundamental principle that courts do not construe statutes in a linguistic vacuum. Thames Talent Ltd. v. Commission of Human Rights and Opportunities, 265 Conn. 127, 136 (2003). When construing a statute, common sense must be used and courts must assume that a reasonable and rational result was intended. Goldstar Medical Services Inc. v. Dept. of Social Services, 288 Conn. 790, 803 (2008). The court should not undertake to examine a statutory provision with blinders on regarding what the legislature intended it to mean. The law favors rational and sensible statutory construction. Connelly v. Comm. of Corrections, 258 Conn. 394,407 (2000). The unreasonableness of the result of one possible alternative interpretation in favor of another that would provide a reasonable result.

95. The Connecticut legislative intent behind Conn. Gen. Stat. § 52-190a was to have Plaintiffs consult with their experts prior to filing suit. The pre-complaint opinion was intended to avoid meritless actions. By attaching the opinion to the good faith certification, any misrepresentation, mistake, or error in the translation of the opinion would be avoided.

96. The proposed law (52-190a) revises in 2005 was intended to help courts weed out frivolous malpractice cases by requiring those who would bring such lawsuits to get an opinion from a medical expert, **NOT** to dismiss **LEGITIMATE** cases.

97. In my case I received a good faith letter from Dr. Howard Zonana, a psychiatrist, a professor, and of the Director of Medicine at Yale University School of Medicine, of whom the late Hon. Judge Hurley acknowledge as a legitimate certificate of good faith, and DENIED the Defendant's initial (1st.) Motion to Dismiss, in 2007. See Judge Hurley's initial memorandum of decisions and in response to two (2) separate **"oral argument"** concerning the Defendants initial Motion to Dismiss, hereto marked **Exhibit 12, 13, 14, and 15** which was properly adjudicated.

**98.** I had sat down with Dr. Zonana and ***six other*** psychiatrists to review his wife's medical malpractice case before Dr. Zonana issued the certificate. Dr. Zonana wrote in his opinion letter that: ***"after reviewing Mrs. Traylor's treatment records and other information, Dr. Awwa's failure to call Traylor "played a proximate role in the death of the patient as it would have added to concerns suicidality and prompted more active intervention by the physician."***

## VII. CONN. GEN. STAT. § 52-190a AND SECTION 52-184c TO BE DECLARED UNCONSTITUTIONAL

99. "The Connecticut Superior Court is empowered to adopt and promulgate rules regulating pleading, practice, and procedure in judicial proceedings in courts in

which they have the constitutional authority to make rules, for the purpose of simplifying proceedings in the courts and of promoting the speedy and efficient determination of litigation upon its merits .... the general assembly lacks the power to enact rules governing procedure that is exclusively within the power of the Courts. ***Conn. Const., Art. Second and V, § 1***; State v. Clemente, 166 Conn. 501, 510-11, (1974), so do the courts lack the power to promulgate rules governing substantive rights and remedies." State v. King, 187 Conn. 292,297, (1982); State v. Rollinson, 203 Conn. 641 (1987). Irrespective of legislation, the rule making power is in the courts. Heiberger v. Clark, 148 Conn. 177 (1961).

100. ***"[T]he primary purpose of the [separation of powers] doctrine is to prevent commingling of different powers of government in the same hands .... The constitution achieves this purpose by prescribing limitations and duties for each branch that are essential to each branch's independence and performance of assigned powers .... It is axiomatic that no branch of government organized under a constitution may exercise any power that is not explicitly bestowed by that constitution or that is not essential to the exercise thereof .... [Thus] [t]he separation of powers doctrine serves a dual function: it limits the exercise of power within each branch, yet ensures the independent exercise of that power."*** (Citations omitted; internal quotation marks omitted.) State v. McCahill, 261 Conn. 492, 505-06 (2002); Massameno v. Statewide Grievance Committee, 234 Conn. 539,551-52, (1995).

101. As between the powers of the legislature and those of the judiciary however, the matter of establishing rules to follow to establish and present evidence of a good faith pre-complaint investigation is manifestly "procedural". This is aptly demonstrated by applying the test for determining whether a statute unconstitutionally encroaches on the power of the judiciary. ***"[A] two part inquiry has emerged to evaluate the constitutionality of a statute that is alleged to violate separation of powers and principles by impermissibly infringing on the judicial authority .... A statute will be held unconstitutional***

***on those grounds if: (1) it governs subject matter that not only falls within the judicial power, but also lies exclusively within judicial control; or (2) it significantly interferes with the orderly functioning on the Superior Court's judicial role."*** (Internal quotation marks omitted.) State v. McCahill, 261 Conn. 492, 505-06 (2002).

102. However, I was required to comply with the requirements of Conn. Gen. Stat. § 52-184c(c) when selecting an author for the good faith opinion because Conn. Gen. Stat. § 52-190a establishes an "objective criteria", not subject to the exercise of discretion, making the pre-litigation requirement more definitive and uniform.

103. Conn. Gen. Stat. § 52-190a requires I to disclose its pre-investigation report as part of the initial filing. It establishes a procedure to determine whether a case may proceed and be heard on the merits. It removes from the court the discretion to determine which experts and evidence may be utilized to establish a prima facie case. This act affects all medical malpractice actions and the court's supervision of which case established a prima facie case. The Act removes from the trial court discretion on which cases will be heard on the merits.

104. Conn. Gen. Stat. § 52-190a governs subject matter that not only falls within the judicial power but also lies exclusively within judicial control. The Connecticut Superior Court has the inherent constitutional power to make rules governing procedure in the courts and any statute regulating procedure not acquiesced by the Superior Court is vulnerable to constitutional attack. State v. Clemente, 166 Conn. 501 (1974); State v. McCahill, 261 Conn. 492, 505-06 (2002). Conn. Gen. Stat. § 52-190a creates a procedure to force the disclosure of I's pre-complaint investigation. The power to enforce discovery is one original and inherent powers of the court of equity. Peyton v. Werhane, 126 Conn. 382, 388 (1940); Skinner v. Judson, 8 Conn. 528, 533 (1831); Carten v. Carten, 153 Conn. 603, 611 (1966);

Katz v. Richman, 114 Conn. 165, 171 (1932); State v. Clemente, 166 Conn. 501 (1974).

105. Courts have an inherent power, independent of statutory authority, to prescribe rules to regulate their proceedings and facilitate the administration of justice as they deem necessary. In re Appeal of Dattilo, 136 Conn. 488, 492 (1950). Courts acting in the exercise of common law powers have an inherent right to make rules governing procedures in them. In re Hien, 166 U.S. 432,436 (1897); McDonald v. Pless, 238 U.S. 264, 266 (1915). It is the inherent power of the judges of the Superior Court to make rules which would bring about an orderly, expeditious and just determination of the issues. In re Appeal of Dattilo at 493.

106. Conn. Gen. Stat. § 52-190a attempts to govern the subject matter that lies exclusively within judicial control and violates the separation of powers. In addition, Conn. Gen. Stat. § 52-190a significantly interferes with the orderly functioning on the Connecticut Superior Court's judicial role.

107. In State v. McCahill, 261 Conn. 492 (2002) this court addressed Public Act 00--200 § 5, in which the legislature had transformed the 1967 statute that was enacted to make post-conviction bail available to all Defendants to a statute that eliminated the trial court's discretion to grant such bail to various classes of convicted offenders. ***The Connecticut Supreme Court has held that Public Act 00-200 § 5 was unconstitutional*** because it presents a significant interference with the orderly function of the Connecticut Superior Court's judicial role. State v. McCahill at 509. The conclusion was based on the premise that Public Act 00-200 § 5 will create an interference with the trial court's disposition of cases other than just the one at bar. The court considered the separation of powers challenge to have merit because the Superior Court's regular role is in supervising the prosecution of individuals charged with crimes involving force against others. It was the fact that the Public Act impacted a number of cases and along with the elimination of the Superior Court's discretion to grant bail in

appropriate circumstances that created the significant interference. State v. McCahill at 509-10.

108. The Connecticut Court's has traditionally since 1818 held the role of gatekeeper when determining which witnesses or experts were qualified to assist the court with issues beyond the keen of the average person. Further, this Court has traditionally determined which cases had merit and which cases lacked merit. It is this Court's discretion that decides when a Plaintiff has presented a prima facie case. There is no doubt that Conn. Gen. Stat. § 52-1 90a is currently and will continue to impact a large number of potential Plaintiffs endeavoring to bring a medical malpractice case. This fact, coupled with the fact that the act eliminates this Court's discretion to determine who is competent to offer an opinion, creates the significant interference. Conn. Gen. Stat. § 52-190a violates the Connecticut Constitution, Article V § 1, separation of powers, and is unconstitutional.

## FACTUAL BACKGROUND

109. Out of the 52 States in the United States of America, Connecticut is the only State that have proposed a law like (Conn. Gen. Stat. 52-190a) with the intend to punish the victims of medical malpractice whose who would bring such lawsuit to the Connecticut Superior Court.

110. This Court should "take notice" that Connecticut is the insurance capitol of the world, and that the state's insurance companies lobbyists were instrumental in the drafting and marshalling of sufficient legislators to enact Conn. Gen. Statute 52-190a, to deprive the underprivileged people of Connecticut in seeking a wrongful death claim and/or medical malpractice claim and in an unconstitutional manner.

111. The lobbyists who were instrumental in drafting Connecticut General Statute's 52-190a blame the victims of medical malpractice case for the said unconstitutional law. Let's consider the extremes. Connecticut General Statute's

52-190a is a tool for big insurance business and the megabanks, which is to say the rich, who flourish no matter what is going on with the economy within Connecticut. Connecticut General Statute's 52-190a does not consider the poor people who cannot afford an expert opinion. The initial fees in Connecticut for an expert opinion is between $10,000 to $20,000 and the total fees are about $25,000.00 to $40,000.00 dollars for that same expert witness on the merits which includes a deposition.

112. The Conn. Gen. Stat. 52-190a is articulated as if the poor don't exist in Connecticut. But with jobs still scarce and the bottom falling out of the Connecticut middle class, the poor are becoming an ever more significant and increasingly desperate segment of the Connecticut population.

113. Can you imagine a family of four could live on annual income of $11,000 or less, and afford to pay for an expert opinion letter if they were faced with medical malpractice? See **Exhibit "16"** hereto attached statements of victims to medical malpractice cases.

114. In December of 2003 my wife wrote a letter to her doctor, Dr. Bassam Awwa asking him for help because she felt an adverse reaction to the medication that he had prescribed to her. Like her phone calls, she received no response prior to her death on March 1, 2004.

115. Between the end of December of 2003 and March 1, 2004, I made numerous telephone calls to my wife's doctor concerning that her condition was worsening, and that she was a threat to herself. I was assured by office staff that Dr. Awwa would return his calls and/or contact me immediately. Finally, on March 2, 2004, one day after my wife's suicide, Dr. Awwa returned our calls. See **Exhibit 17** as proof and evidence.

116. After my wife's death, I discovered that the medicine prescribed to my wife **(*effexor*)** was NOT recommended to patients with suicidal tendencies.

117. It is my belief that my wife's death could have been prevented and the standard of care provided to her by her doctor cause of her death. Could this be the reason why his wife's medical records were DESTROYED? **MR. LEONE:** *"I'm only obligated and I've done what I can to produce that which he has asked. If I'm told by the company and by the client that they don't have them,* ***they destroyed them****, they're not available, I don't know what else I can do, Your Honor."* **THE COURT**: "*Yeah. No, I'm shocked and it's just - - and I have nothing to base it on, I just always - -* ***I assumed they kept everything****."*

118. I obtained a good faith letter from Dr. Howard Zonana, a psychiatrist, a professor, and of the Director of Medicine at Yale University School of Medicine. Dr. Zonana stated: ***"After reviewing Mrs. Traylor's treatment records and other information, Dr. Awwa's failure to call Traylor "played a proximate role in the death of the patient as it would have added to concerns re suicidality and prompted more active intervention by the physician." See enclosed letter.***

119. The late Hon. Judge Hurley acknowledge Dr. Zonana's certificate as a legitimate good faith letter, and DENIED the Defendant's initial (1st.) Motion to Dismiss, in 2007. . On May 31, 2007 the Honorable Judge Michael D. Hurley ruled that I did in fact comply with C.G.S. Sec. 52-190a by stating: *"The court may take into account the good faith certificate and written opinion since they were filed over two months "prior" to the defendants raising the issue of noncompliance with Sec. 52-190a. Given this, this court finds that* ***the Plaintiff has satisfied the requirements of sec. 52-190a."***

120. However, on February 15, 2011, My case was in fact dismissed and sent to the Connecticut Appellate Court after four (4) years of litigation in retaliation against I

for appealing to the Connecticut Judiciary Committee concerning the unconstitutionality of Conn. Gen. Stat. 52-190a. This was the Defendant's second (2sd.) Motion to Dismiss for the same reasons concerning 52-190a, three (3) years later. Refer back to **Exhibit 12, 13, 14, and 15** the Hon. Judge Hurley pervious oral argument and memorandum of decision.

121. The above State Senators who had a conflict of interest in voting on HOUSE BILL HB-6487 would naturally have a different view about the proposed legislation to change the unconstitutionality of Conn. Gen. Stat. § 52-190a.

122. The question is whose constitutional rights are being violated?

- Is it the victims to medical malpractice? Conn. Gen. Stat. 52-190(a) and Section 52-184c has added **INSULT TO INJURY** to the victims of medical malpractice.

- Is it the doctor who commits medical malpractice? Some circumstances we can predict, but medical malpractice we CANNOT.

## IN CONCLUSION

123. Have the VICTIMS to medical malpractice in the State of Connecticut been made invisible? **Does the act of medical malpractice in the State of Connecticut negate doctor's responsibility from deviating from the standard of care?** Through the actions of the above Defendants **HOUSE BILL HB-6487 was temporarily passed which does not offer me any** solution to my due process and equal protection rights being violated, nor does it offers any solution to the other countless citizens of Connecticut from being deprived of their constitutional rights.

124. I'm hereby requesting the State Legislators to declare Conn. Gen. Stat. 52-190a and Section 52-184c unconstitutional because it deprives citizens of their basic fundamental and due process rights in seeking remedies through the Judicial Process which Conn. Gen. Stat. 52-190a and Section 52-184c has added **INSULT TO INJURY and** constitutes a very serious harm to the victims of medical malpractice.

125. **IMAGINE** taking your wife to a doctor for mental illness and the doctor gives her medication which clearly reads that she should ***"not"*** be taking it because of her suicidal ideation. Isn't this tantamount to putting a loaded gun next to her bed? **IMAGINE** phoning this doctor repeatedly, **……**and your complaint was proven in open court that the doctor only returned one phone call**…..**which was the day ***"after"*** your wife's death**….**which was too late**!!!** Refer back to **Exhibit 17** confirming that on March 2, 2004, one day "after" my wife's suicide, Dr. Awwa returned our calls….too late. **IMAGINE** the late Hon. Judge Hurley ordering the doctor to provide me with the missing medical records only to find out that they destroyed parts of these medical records *deliberately*. See **Exhibit 18**. **IMAGINE** crying and crying about how to put back the pieces of this horrible, true tragedy. The anguish of seeking justice for your beloved wife of whom was just…suddenly taken away…..from you because of medical malpractice. **IMAGINE** only to be faced with the pain, humiliation, and the coldness of the sociological jurisprudence Exhibits 1, 2, 3, and 4 while you're seeking justice for your beloved wife. **IMAGINE** having been completely devastated, heartbroken, feeling hopeless that you will never find justice for your beloved wife. **IMAGINE** your wife coming back to you in your dreams even though it is a strange yet natural inevitable mystery. Did she seize to exist in your heart? Then why are the State Actors applying law unconstitutionally in an effort to shield and conceal a medical malpractice murderer? Can the State Actors even face the truth that my wife could still be alive today if she had not taken the medication which was prescribed by a medical malpractice murderer while he failed to return any phone calls?

**BALANCING OF HARM**

126. In determining whether "substantial harm" will result to other interested parties, the court is required to examine the "substantiality, likelihood of occurrence and adequacy of proof' of any asserted harm to the defendant. FDIC v. Cafritz, 762 F. Supp. 1503, 1509 (D.D.C. 1991) (order potentially propelling individual into bankruptcy does not constitute substantial harm outweighing taxpayers' right to be paid). Where the potential harm to Plaintiffs in denying the motion substantially outweighs the harm to Defendants if the motion is granted, this Court has found the "balance of harms" test to be satisfied. Stewart v. Armory Bd., 789 F. Supp. 402, 406 (D.D.C. 1992). The Government's failure to act expeditiously may tip the balance in favor of enjoining prospective Government action, since by its delay the Government demonstrates that its action is not ***urgently required.*** E.g. Topanga Press, Inc. v. Los Angeles, 989 F. 2d 1524 (9th Cir. 1993). The citizens of Connecticut continue to be harmed by Connecticut General Statute 52-190a and Section 52-184c which blames the victims of medical malpractice, and deprives the under privileged citizens of Connecticut the right to seek a wrongful death claim and/or medical malpractice claims which is pending currently before an unconstitutional law.

**LIKELIHOOD OF SUCCESS ON THE MERITS.**

127. One of the questions for this court to resolve is that I Sylvester Traylor in my **individual capacity and administrator's capacity** has suffered from the medical malpractice of, Dr. Bassam Awwa M.D. who has destroyed medical records during a legal proceeding.

128. What remains at issues is the Constitution and Laws of the United States, that I's due process right is being violated because of an unconstitutional law within the State of Connecticut Conn. Gen. Stat. 52-190(a) and Section 52-184c.

129. I have shown that the Connecticut Superior Court through a Motion to Dismiss before the late Hon. Judge Hurley, acknowledged Dr. Zonana's certificate as a LEGITIMATE good faith letter, and DENIED the Defendant's initial (1st.) Motion to Dismiss, in 2007. This denial shows a substantial likelihood of success on the merits. E.g., FDIC v. Cafritz, 762 F. Supp. 1503, 1506 (D.D.C. 1991). This does not mean, however, that Plaintiff has the burden of showing that it will necessarily win on the merits: "All courts agree that Plaintiff must present a ***prima facie case*** but need not show that he is certain to win." Id., quoting 11 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure 2948, at 452. The determination as to the likelihood of success "is not a mere prediction of success by a given percentage. Rather, '(t)he necessary "level" or "degree" of possibility of success will vary according to the court's assessment of the other factors) in the preliminary injunction inquiry)." Cafritz, 762 F. Supp. At 1506, quoting Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F. 2d 841, 843 (D.C. Cir. 1977). The Court of Appeals for the D.C. Circuit has adopted a flexible approach to the court's preliminary assessment of their merits:

- We believe that this approach is entirely consistent with the purpose of granting interim injunctive relief... Generally, such relief is preventative, or protective; it seeks to maintain the status quo pending a final determination of their merits of the suit. An order maintaining the status quo is appropriate when a serious legal question is presented, when little if any harm will befall other interested persons or the public and when the denial of the order would inflict irreparable injury on the movant. There is substantial equity, and need for judicial protection, whether or not movant has shown a mathematical probability of success.

**PUBLIC INTEREST FACTOR**

130. The Public Interest Factor, tilts towards the best interest of the public that the Conn. Gen. Stat. 52-190(a) and Section 52-184c should be declared

unconstitutional.

131. Some circumstances we can predict, but medical malpractice we CANNOT.

132. I hereby respectfully move the State Legislators to apply the Golden Rule of Law in considering declaring t Conn. Gen. Stat. 52-190(a) and Section 52-184c unconstitutional: ***"In weighing out the rights of the individuals in the common good to apply to the law fairly and reasonably to protect the benefits of the many over the interest of the few."*** *See* Amitai Etzioni is author, most recently, of *The New Golden Rule: Community and Morality in a Democratic Society* (Basic Books, January 1997). "Balancing Individual Rights and the Common Good," Tikkun, Vol.12, No.1.

## CAUSES OF ACTION

133. Connecticut General Statutes 52-190(a) and Section 52-184c violates the Citizens of Connecticut due process and equal protection rights, under the 14th. Amendment of the United States Constitution, on its face as applied, by directing the underprivileged people of Connecticut to seek an expert opinion which the extreme poor people of Connecticut cannot afford.

***"The rights of the Citizens of Connecticut are protected by the Constitution of the United States and no legislation can abridge their rights through applying an unconstitutional law which will punish victims of medical malpractice who cannot afford the $10,000 to $20,000 expert opinion letter."***

- The fees in Connecticut for an expert opinion is between $10,000 to $20,000, and the total fees are about $25,000.00 to $40,000.00 dollars for that same expert witness on the merits which includes a deposition. The 14th Amendment has been violated: "**No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the *equal protection of the law*."**

- The Fourteenth Amendment Due Process Clause and Equal Protection clause (Section 1), expressly declares no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law..."

134. Connecticut General Statutes 52-190(a) and Section 52-184c violates the Citizens of Connecticut due process and equal protection rights, under Connecticut Constitution Article First Sec. 1, 10, and 20, on its face as applied, by failing to provide access to the Connecticut Superior Court in by breaching: Article First Sec. 1: **"All Courts shall be open, and every person, for an "injury done" to him in his person, property or reputation, shall have remedy by due cause of law".**

135. Connecticut General Statutes 52-190(a) and Section 52-184c violates the Citizens of Connecticut Article Fifth of the Connecticut Constitution, on its face as applied, (separation of powers) in seeking judicial remedies for medical malpractice claims because it is unconstitutionally vague.

136. Connecticut General Statutes 52-190(a) and Section 52-184c violates the Citizens of Connecticut the Fifth Amendment, on its face as applied, by dismissing **LEGITIMATE** complaint before the discovery process, so that the court may access the merits of the case. The State of Connecticut, in pertinent part, that: ***"nor be deprived of life, liberty, or property, without due process of law..."*** Due process is denied when **LEGITIMATE** case(s) are being denied a trial by a jury.

137. Connecticut General Statutes 52-190(a) and Section 52-184c violates the citizens of Connecticut the Seventh Amendment, on its face as applied which provides in pertinent part that ***"In suits at common law, where the value in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved..."*** This language does not include a single reference to "manipulation" of a jury by the Court in a conspiracy with lawyers to design a verdict suitable to the Court through the use of lawyer rules, judicial rules, court rules, or otherwise ***trumped-up legal technicalities*** and instructions which effectively "handcuffs" the jury.

138. All of these activities are no more or less than a denial of the right to a jury of peers with the constitutional authority to judge both the facts and law in a case.

## PRAYER FOR RELIEF

**WEREFORE,** I respectfully request that the State legislators:

1. **Declare** that Conn. Gen. Stat. 52-190(a) and Section 52-184c violates the Fifth, Seventh, and the Fourteenth Amendment to the United States Constitution.

2. Alternatively, this law (52-190a) should be amended to incorporate a provision that provides a reasonable "voucher" for indigent plaintiffs in medical malpractice cases to obtain funds for the "Certificate of Merit." Refer back to pages 14-16 of this written testimony.

3. **Can the Underprivileged of Connecticut even afford the COST $10,000 to $20,000, certificate of merit, due process right?**

4. An Example of the present argument which is a last attempt to save an unconstitutional law:

   **One day a young man goes to the rural area, for the first time….for a root canal.**

   **The young man meets a dentist, who uses paper clips instead of stainless steel posts in root canals in an effort to save money.**

   **The young man reported infections after the dentist performed the root canal.**

   **The former dentist has pleaded guilty to Medicaid fraud.**

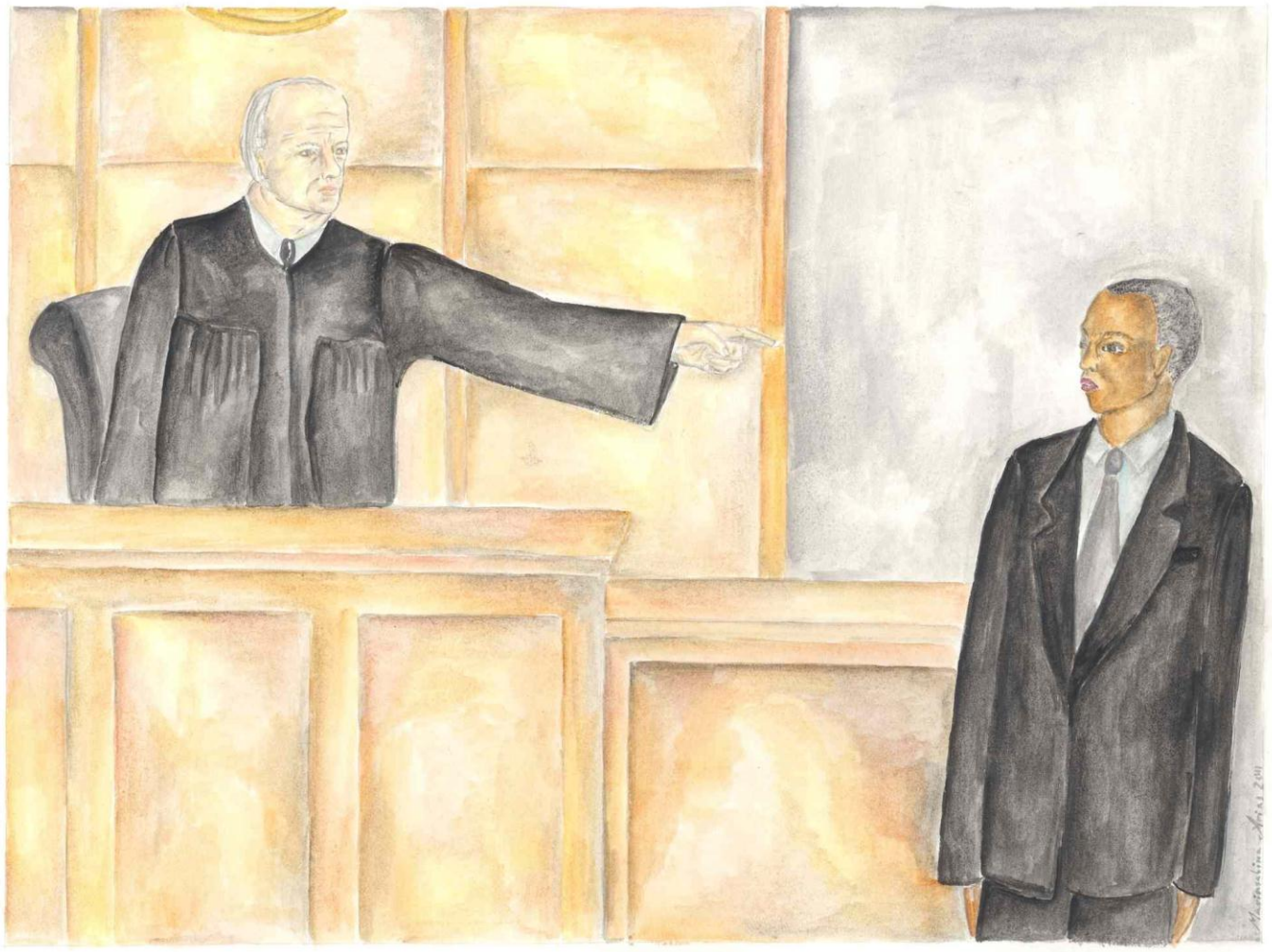
   **"Paper clips are not the same as a stainless steel post."**

5. **<u>The moral of the story is:</u> The crucial question concerning Conn. Gen. Stat. Sec. 52-190a, is: It doesn't matter if you try and argue over the words same or similar….it will still be an unconstitutional law.**

Dated this: March 7, 2012.

**Sylvester Traylor**
**881 Vauxhall St. Ext.**
**Quaker Hill, CT. 06375**
**(860) 331-4436**
**Email: syltr02@gmail.com**

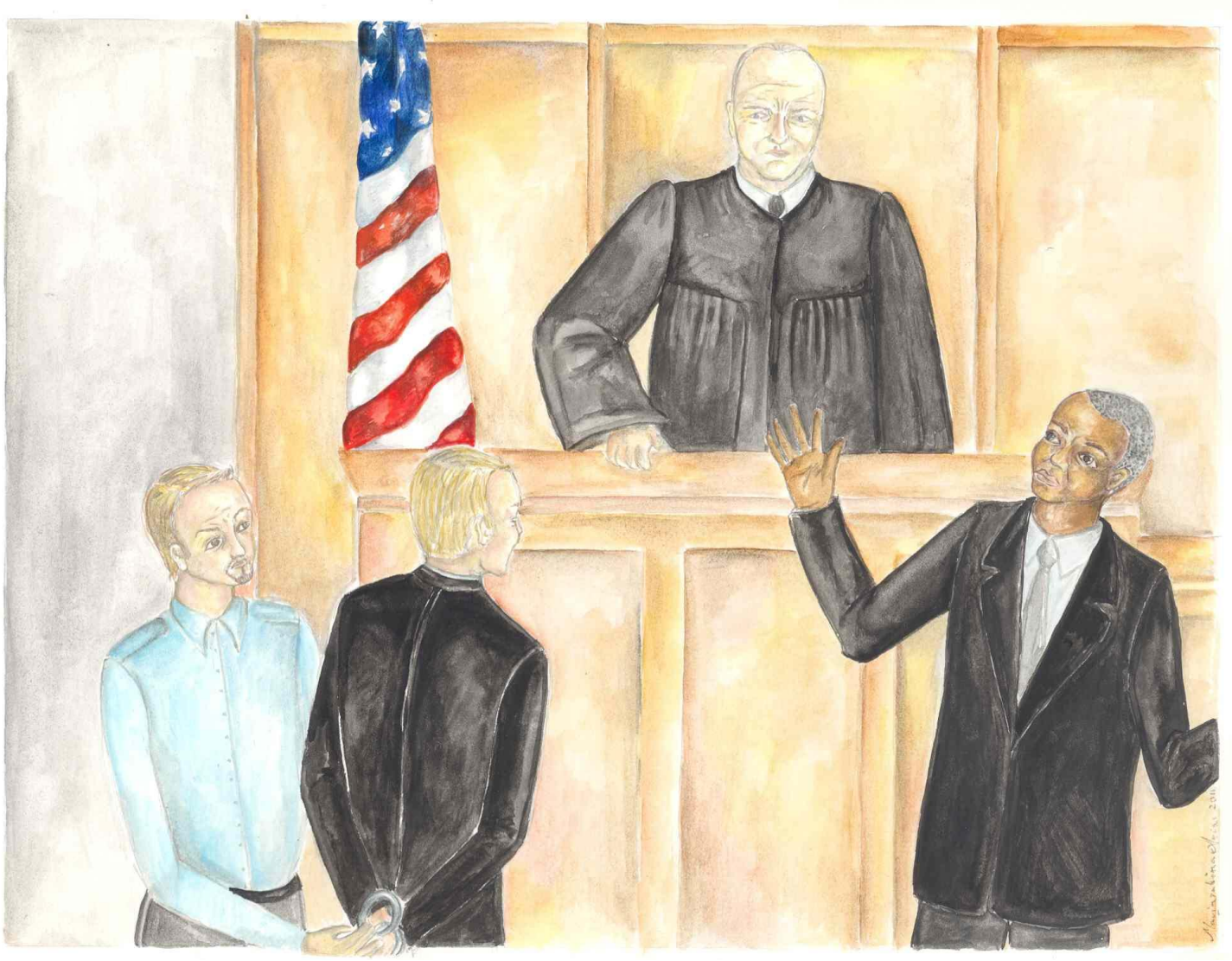
# SOCIOLOGICAL JURISPRUDENCE - EXHIBIT 1



## INSTITUTIONALIZED RACISM

The Plaintiff, an African-American, was ordered to obtain an attorney in his “OWN NAME,” during a scheduled hearing without all parties present after an Ex Parte communications with the missing party.

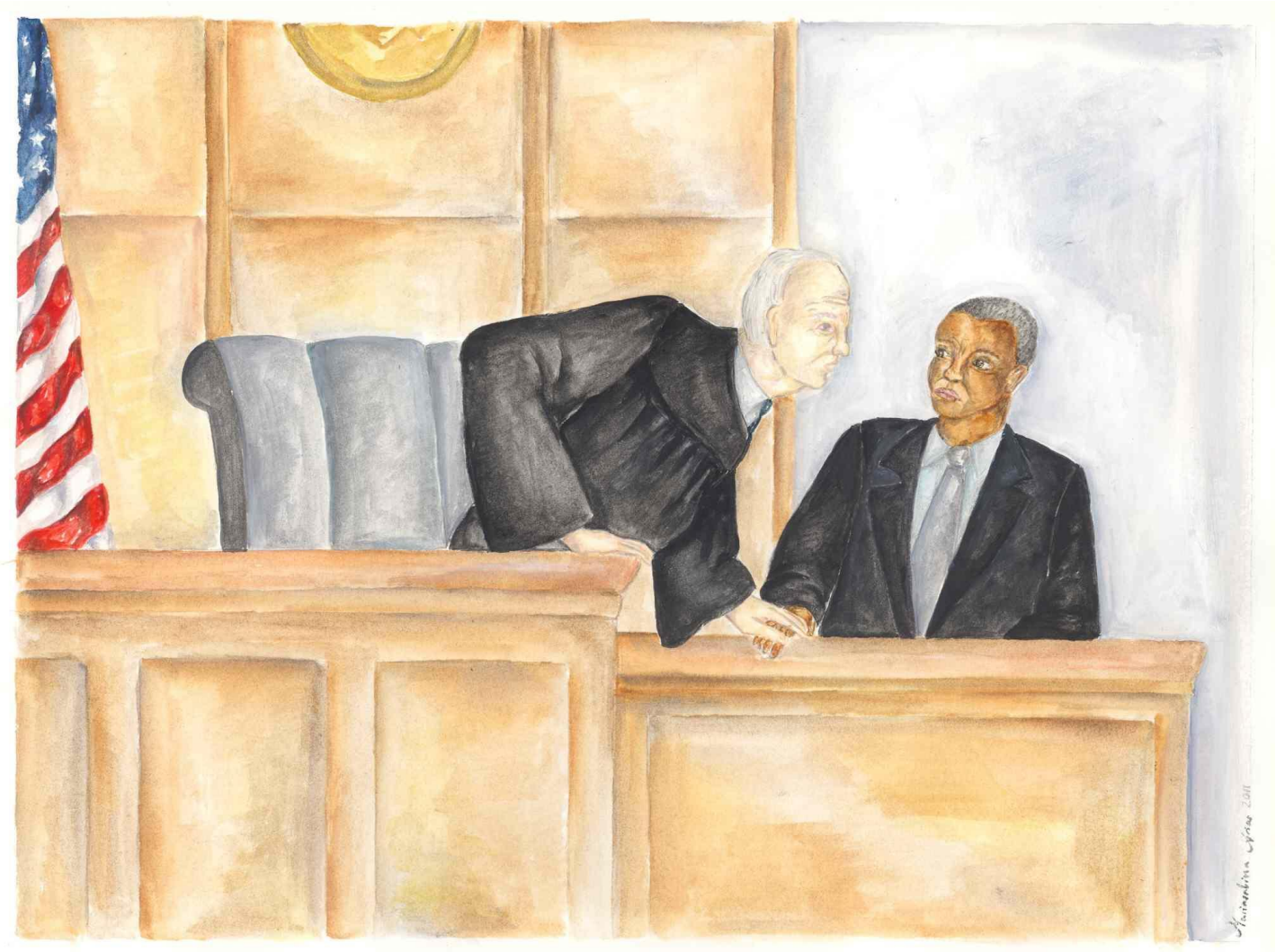
# SOCIOLOGICAL JURISPRUDENCE - EXHIBIT 2



## ABUSE OF CONTEMPT POWER

Once the Plaintiff, an African-American, obtained an attorney. His attorney was held in contempt of court for six (6) hours, without being fined for any wrongful actions.

## SOCIOLOGICAL JURISPRUDENCE - EXHIBIT 3



## INTIMIDATION OF A WITNESS

What would have been the consequences for an African-American Plaintiff if the roles had been reversed, and he had reached into the judge's bench to touch a judge?

## EXHIBIT 4

| | | |
|---|---|---|
| DOCKET NO.: KNL-CV-06-5001159S | : | SUPERIOR COURT |
| SYLVESTER TRAYLOR, ET AL | : | J.D. OF NEW LONDON |
| V. | : | NEW LONDON |
| BASSAM AWWA, M.D., ET AL | : | AUGUST 17, 2010 |

**AFFIDAVIT**

My name is James A. Hall, IV, and I am over the age of 18 and believe in the obligation of an oath.

1. On July 8, 2010, I witnessed four Judicial Marshals in the courtroom while Mr. Traylor's hearing proceeded.

2. When I questioned one of the State of Connecticut Judicial Marshals as to why there were four Marshals in a hearing room with only myself, the defense attorney and Mr. Traylor, he replied "get used to it".

3. I have never previously seen four Judicial Marshals in the courtroom for a case which is not a criminal case.

4. At the next hearing with Mr. Traylor, there was only one Judicial Marshal.

5. Mr. Traylor has asked that I attest to what I personally witnessed and the above is true and accurate to the best of my knowledge and recollection.

James A. Hall, IV, Esq.

Subscribed and sworn to before me
this 17th day of August, 2010.

~~Commissioner of Superior Court~~
Notary Public
My Commission Expires: 8-31-14

FILED

AUG 20 2010

SUPERIOR COURT
New London Judicial District

(390)

Exhibit "44"

Thomas S. Lloyd
49 Chappell St.
New London, CT. 06320
(860) 447-1087

July 31, 2009

To the Statewide Bar Counsel
287 Main St. 2nd. Fl.
East Hartford, CT. 06118

RE: Unbecoming of an Attorney.

Dear Bar Counsel,

On July 31, 2009 while I was in the lobby of the Superior Court clerk's office, Attorney Donald Leone was talking with the acting Chief Clerk in the lobby area. Mr. Traylor walked in and immediately Attorney Leone became loud and confrontational with Mr. Traylor. Upon asking him, "What do you want?" Mr. Traylor's response was, "I'm not here to talk with you." Attorney Leone's response was; "This is my office NOW! And What do you want!!!" Mr. Traylor's response: "I am not here to speak with you or get into any confrontations."

There was another witness in the lobby as well and she will be giving her statement concerning Attorney Leone's rude and confrontational attitude towards Mr. Traylor. Furthermore, at no time did the acting Chief clerk correct Attorney Leone concerning his rude behavior towards Mr. Traylor.

Yours truly,

Thomas Lloyd

Thomas S. Lloyd

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Exhibit 4

Sylvester Traylor
881 Vauxhall St. Ext.
Quaker Hill, CT. 06375
(860) 331-4436

October 19, 2009

Richard Zaharek
61 Woodland St.
Hartford, CT. 06105
(860) 722-5868

RE: Retaliation for making a "Racial Profiling Complaint"

Dear Sir,

On May 27, 2009 I wrote to your office concerning racial profiling by the Judicial Marshals in the New London Court.

As you know since, I've received a response from your office regarding my complaint against the New London Marshals I have not made any additional complaint against the New London Marshals. Thank you for resolving that complaint.

However, one of the New London Marshals was transferred to Norwich, and it is my belief that he did not get your memo concerning to ceasing the harassment and racial profiling.

On October 16, 2009 I was forced to contact the Norwich Police Department concerning Marshal Zeimet and Marshal Winski. Marshal Winski instructed Marshal Zeimet to single me out as I was approaching a metal detector. There were people ahead of me, all who were white, but their wallets were not opened and inspected. When I questioned both Marshals why I was the only one singled out. Also see attached Norwich Police 911 report hereto marked ***Exhibit "A".***

- They said that: ***"We can single out who ever we want too."***
- My response was that: ***"That does not give you the power to harass and/or racially profile a person."*** Needless to say, when I went through the metal detector with NO ringing sounds going off.

I then proceeded to go down to the Law Library which I discovered was closed. As I was leaving the building, I asked for the two Marshals names, so that I may write to you again, but they refused to give me their names.

- Instead they questioned me, **"Why do you need our names?"**

  I saw an ink pen on top of "the large metal scanner", so I picked it up and started to write down their names.

Ex. 4

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Ex. PLAINTIFF'S EXHIBIT NO. 9/83

Suddenly Marshal Zeimet , came over from behind his counter, and then pulled out his baton started to strike at my legs in a provoking manner while clutching my writing hand.

- Marshal Zeimet then said, ***"Put the Ink pen back."***

  I was ***ONLY*** writing down his name. Needless to say, I had the time to write down both Marshals names.

- I said in a very loud voice: ***"Don't touch me!"***

  Marshal Zeimet, looked back towards Marshal Winski, and then Marshal Winski motioned his head to say, No.

  After I finished writing down their names, I put the ink-pen back on top of "the large metal scanner", where I got it from. Refer back to the attached Norwich Police 911 report hereto marked ***Exhibit "A".***

- I then said to Marshal Winski, ***"This guy is out of control, and over reacting. Did you see him strike at my legs."***

- Suddenly, Marshal Zeimet, looks back towards to Marshal Winski and said, ***"He took a defense stands."***

  Needless to say, all I was doing was writing down his name. There was no reason for Marshal Zeimet to come from behind his counter and approached me, or swinging at my legs in a provoking manner.

I have not given anyone the reason to provoke me. I am a law abiding citizen of the United States. I do not want to feel intimidated or provoked each and every time that I enter the Superior Court. I only go to the Superior Court to conduct official business. I am hereby requesting that the discrimination towards me because of my race, African -American and Pro-Se status be eradicated.

Yours Truly,

Sylvester Traylor

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Exhibit A